

1 ANNETTE L. HURST (State Bar No. 148738)  
2 DANIEL N. KASSABIAN (State Bar No. 215249)  
3 ELENA M. DIMUZIO (State Bar No. 239953)  
4 HELLER EHRMAN LLP  
5 333 Bush Street  
6 San Francisco, California 94104-2878  
7 Telephone: +1.415.772.6000  
8 Facsimile: +1.415.772.6268  
9 E-mail: Annette.Hurst@HellerEhrman.com  
10 Daniel.Kassabian@HellerEhrman.com  
11 Elena.DiMuzio@HellerEhrman.com

12 Attorneys for Plaintiffs  
13 CANTER & ASSOCIATES, LLC and  
14 LAUREATE EDUCATION, INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 CANTER & ASSOCIATES, LLC and  
19 LAUREATE EDUCATION, INC.,  
20  
21 Plaintiffs,

22 v.

23 TEACHSCAPE, INC.,  
24  
25 Defendant.

Case No. C 07-3225 RS

**DECLARATION OF ELENA M.  
DIMUZIO IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
COMPEL INITIAL DISCLOSURES**

Judge: The Honorable Richard Seeborg  
Ctrm.: 4 (5th floor)  
Date: December 26, 2007  
Time: 9:30 a.m.

1 I, Elena M. DiMuzio, declare:

2 1. I am an associate with the law firm of Heller Ehrman LLP (“Heller Ehrman”),  
3 counsel to Plaintiffs Laureate Education, Inc. (“Laureate”) and Canter and Associates, LLC  
4 (“Canter”) in this action. I make this declaration in support of Plaintiffs’ Motion to Compel  
5 Initial Disclosures. Unless otherwise noted, the factual assertions herein are made on my  
6 personal knowledge and, if called upon to do so, I could and would testify competently  
7 thereto.

8 2. On September 26, 2007, Plaintiffs served Rule 26(a) initial disclosures on Defendant  
9 Teachscope, Inc. (“Teachscope”) via mail.

10 3. Also on September 26, 2007, after the hearing on Defendant’s motion to dismiss,  
11 counsel for both parties met and conferred. Mr. Kassabian (counsel for Plaintiffs) asked  
12 Ms. Athanacio (counsel for Defendant) whether Teachscope would serve initial disclosures  
13 that day; Ms. Athanacio responded that she had not yet started drafting the initial  
14 disclosures and that as a result, Teachscope would not serve initial disclosures on September  
15 26, 2007.

16 4. After the parties’ October 15 Rule 26(f) conference, on October 25, counsel for  
17 Teachscope forwarded its proposed edits to the draft Joint Case Management Statement.  
18 Regarding initial disclosures, Teachscope stated “[a]bsent an order by this Court,  
19 Teachscope will serve its Rule 26(a) initial disclosures on or before October 31, 2007.”  
20 Teachscope has not served its initial disclosures to date.

21 5. During the October 15 Rule 26(f) conference, Ms. Athanacio stated that Teachscope  
22 would not negotiate or discuss the protective order proposed by Plaintiffs unless Plaintiffs  
23 agreed in writing that they would not raise the fact that the parties were discussing a  
24 protective order with the Court. Plaintiffs did not so agree, and Teachscope then refused to  
25 discuss the draft protective order.

26 6. As of today, November 15, 2007, Plaintiffs have received no response to the e-mail  
27 of November 9, 2007 (Exhibit C hereto) to counsel for Teachscope.

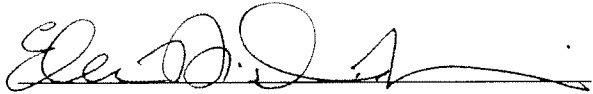
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1 7. A true and correct copy of an e-mail from Ms. Athanacio to Ms. Hurst (counsel for  
2 Plaintiffs) dated October 30, 2007 is attached hereto as Exhibit A.

3 8. A true and correct copy of an e-mail from Ms. Hurst to Ms. Athanacio dated October  
4 30, 2007 is attached hereto as Exhibit B.

5 9. A true and correct copy of an e-mail from myself to Ms. Athanacio dated November  
6 9, 2007 is attached hereto as Exhibit C.

7  
8 I declare under penalty of perjury pursuant to the laws of the United States that the  
9 foregoing is true and correct of my own knowledge and that this Declaration is executed on  
10 November 15, 2007 in San Francisco, California.

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13 ELENA M. DIMUZIO  
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## **EXHIBIT A**

**DiMuzio, Elena M.**

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**From:** Athanacio, Gayle M. [gathanacio@sonnenschein.com]  
**Sent:** Tuesday, October 30, 2007 11:11 AM  
**To:** Hurst, Annette L.; DiMuzio, Elena M.  
**Cc:** Lepera, Christine  
**Subject:** Canter/Laureate v Teachscape

Please be advised that we will not be serving our initial disclosure tomorrow as we had originally anticipated. Thus, please note that the joint CMC statement currently under consideration (which per the court's notice is now not due until December 12), will need to be revised.

Gayle

Gayle M. Athanacio  
Sonnenschein Nath & Rosenthal LLP  
525 Market Street, 26th floor  
San Francisco, CA 94105-2708  
direct dial: 415-882-5077  
facsimile: 415-882-0300  
email: gathanacio@sonnenschein.com

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11/14/2007

## **EXHIBIT B**

**DiMuzio, Elena M.**

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**From:** Hurst, Annette L.  
**Sent:** Tuesday, October 30, 2007 12:38 PM  
**To:** Athanacio, Gayle M.; DiMuzio, Elena M.  
**Cc:** Lepera, Christine  
**Subject:** RE: Canter/Laureate v Teachscape

Our view is that Teachscape's Initial Disclosures are well past due.

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**From:** Athanacio, Gayle M. [mailto:gathanacio@sonnenschein.com]  
**Sent:** Tuesday, October 30, 2007 11:11 AM  
**To:** Hurst, Annette L.; DiMuzio, Elena M.  
**Cc:** Lepera, Christine  
**Subject:** Canter/Laureate v Teachscape

Please be advised that we will not be serving our initial disclosure tomorrow as we had originally anticipated. Thus, please note that the joint CMC statement currently under consideration (which per the court's notice is now not due until December 12), will need to be revised.

Gayle

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Sonnenschein Nath & Rosenthal LLP  
525 Market Street, 26th floor  
San Francisco, CA 94105-2708  
direct dial: 415-882-5077  
facsimile: 415-882-0300  
email: gathanacio@sonnenschein.com

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11/14/2007

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## **EXHIBIT C**

**DiMuzio, Elena M.**

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**From:** DiMuzio, Elena M.  
**Sent:** Friday, November 09, 2007 10:46 AM  
**To:** Athanacio, Gayle M.  
**Cc:** Hurst, Annette L.; Kassabian, Daniel N.; Lepera, Christine  
**Subject:** Canter & Associates and Laureate v. Teachscape, No. C 07-3225

Dear Gayle,

I write regarding your statement in your e-mail of October 30, 2007 that Teachscape would not serve its initial disclosures on October 31, as Teachscape had previously indicated it would do. We have received no initial disclosures from Teachscape to date.

Canter and Laureate have not agreed to a stay of discovery in this case. Teachscape's initial disclosures, pursuant to the Initial Case Management Order, were due on September 26, 2007. They are now substantially overdue. Please indicate a date certain by which you will serve initial disclosures. If you will not provide such a date, Plaintiffs will move to compel this information.

In addition, we ask that you reconsider your decision not to discuss the substance of the draft Protective Order that we forwarded to you on September 10 and again on October 11. If Teachscape refuses to discuss, substantively, the Protective Order such that we can move toward filing a Proposed Order with the Court before December 19, we will move the Court to enter such an order. However, it would greatly benefit both parties to reach an agreement jointly on this issue. Local Rule 79-5 poses a high bar for sealing documents submitted to the Court, requiring a strong showing that information is trade secret, privileged, or similarly "sealable." If both parties agree that such information must be protected in this case, it is more likely that the Court will enter a robust protective order. If the parties are not in agreement, the Court may reduce the level of protection entered. This is against the interests of Teachscape as well as Canter and Laureate. Please indicate if you will consider meeting and conferring to discuss the substance of the Proposed Protective Order.

Sincerely,

**Elena DiMuzio** | Attorney | **HellerEhrman**LLP | 333 Bush Street | San Francisco, CA 94104  
tel: +1.415.772.6293 | fax: +1.415.772.1753 | email: elena.dimuzio@hellerehrman.com | web:  
[www.hellerehrman.com](http://www.hellerehrman.com)

11/14/2007